

**Personal Communications Network Services of New York**

A LOCATE Company

January 12, 1994

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FEDERAL COMM. COMMISSION
OFFICE OF THE
SECRETARY

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

The Honorable James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

The Honorable Andrew D. Barrett
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

Re: Ex Parte Comments on Designation of Small Business Eligibility
for PCS Auctions -- PP Docket No. 93-253

Dear Chairman Hundt and Commissioners Quello and Barrett:

Personal Communications Network Services of New York ("PCNS-NY"), a subsidiary of LOCATE, is a small business that has been actively involved in the development of PCS since 1990. In these four years, PCNS-NY has spent approximately \$4 million in experimentation with PCS, has performed market and user group studies, and has negotiated relocation agreements with existing microwave users in the 2 GHz band. This investment is significant for a small, entrepreneurial company such as PCNS-NY, and represents a far greater risk than that assumed by larger companies who invest in research and development. Through this process, PCNS-NY has been committed to positioning itself to become a PCS licensee and to quickly roll out a PCS system. PCNS-NY has always intended to provide PCS as a competitive, small business.

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The competitive bidding licensing process, however, has changed the entry requirements for small businesses. The proposed competitive bidding process imposes two contradictory pressures on potential PCS licensees who intend to bid for PCS licenses as small businesses. First, it limits the companies' growth and fund raising ability by proposing to define small business by a net worth calculation without specifying the date on which that determination will be made. Second, the proposed competitive bidding process requires small businesses to make an upfront payment, bid the winning price and for the first time "pay" for the spectrum. Even with the installment plan proposed by the Commission, the cost of the winning bid in a major market, such as New York, for a small business will be significant.

The Congressional goal of promoting opportunities for small businesses can be achieved and the contradiction between "smallness" and adequate capitalization eliminated by defining small business eligibility as of September 23, 1993 -- the date of adoption of the PCS Second Report and Order and adoption of the Competitive Bidding Notice of Proposed Rulemaking. The date of the adoption of the PCS Second Report and Order is the appropriate date for determining the eligibility of small businesses because it provides the time to raise needed capital and avoids post Report and Order jockeying by companies seeking to take advantage of the Commission's rules. Furthermore, the date of adoption of the Second Report and Order was the first notice by the Commission that it intended to "set aside" spectrum for "designated entities" including small businesses. That date also was the date of adoption of the Notice of Proposed Rulemaking on the competitive bidding rules that contained the Commission's specific proposal and its proposed definition of small business.

Determining small business eligibility at any date beyond September 23, 1993, would deter small businesses from raising the capital necessary to satisfy the Commission's proposed requirement for an upfront payment and, perhaps more importantly, to finance the quick roll out of a PCS system.^{1/} The costs of deploying a PCS system are significant. In addition to the cost of deployment, PCS licensees also will have to pay for the migration of existing 2 GHz users to alternative spectrum or media and the costs of network design, construction and installation. PCS licensees also will have to compete with up to six other PCS licensees in addition to incumbent cellular providers and other wireless service providers such as ESMRs. Success in this highly competitive market will require a ready access to capital and the ability to deploy it quickly.

^{1/} See Comments of FiberSouth, PP Docket No. 93-253 (filed Nov. 10, 1993).

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The competitive bidding licensing process also imposes entry costs that must be borne upfront by potential PCS licensees to evaluate the market value of each license. These costs, which are not recoverable if the auction is not won, require the dedication or purchase of engineering talent, spectrum analysis capabilities, and individualized market assessments. As an initial matter, companies must have the capital or access to the capital to perform this evaluation. The costs of this evaluation may exhaust the resources of certain small businesses or even be beyond their reach.

Evaluation of the eligibility of a small businesses as of September 23, 1993 will promote Congress' goal of providing small businesses with an opportunity for participating in spectrum based services. Many of the companies that must now seek to finance their auction strategy, upfront payment and immediate PCS roll out would have qualified as small businesses if they were not forced to raise the money necessary to effectively evaluate the markets and enter the winning bid. Clearly, Congress did not intend for the FCC to penalize small businesses for their success in responding to Congress' choice of the competitive bidding process as the licensing process for PCS.

Accordingly, PCNS-NY urges the Commission to determine small business eligibility as of September 23, 1993.

Sincerely,



Steve Curtin
Vice President
Personal Communications Network Services
of New York

cc: Robert Pepper
Thomas Stanley
Evan Kwerel
David Siddall